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Appellant's Brief 1976-SC-0427

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**KYSC1976-SC-0427-01**

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# **APPELLANT'S BRIEF**

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# SUPREME COURT OF KENTUCKY

File No. 76-427

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ROBERT H. TAYLOR . . . . . Appellant

*versus*

LOY CRAWFORD, Et Al. . . . . Appellees

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APPEAL FROM THE JEFFERSON CIRCUIT COURT  
CHANCERY BRANCH, THIRD DIVISION  
HONORABLE CHARLES ANDERSON

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## BRIEF FOR APPELLANT

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MAY 17 1976

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This is to certify that a copy of this Brief has been served on Mr. Cecil Davenport and Mr. Henry Schildknecht, Jr., and Mr. Joseph V. Mobley, Jr., and the Hon. Charles Anderson, Trial Judge on this the 14th day of May, 1976.

*Bill V. Seiller*  
Counsel for Appellant

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### **STATEMENT OF QUESTION PRESENTED**

Did the Chancellor err in adjudging that appellee, Loy Crawford, was not disqualified by conflict of interest from holding the office of Mayor of the City of West Buechel?

# SUPREME COURT OF KENTUCKY

File No. 76-427

---

ROBERT H. TAYLOR       -       -       -       -       *Appellant*

*v.*

LOY CRAWFORD, Et Al.       -       -       -       -       *Appellees*

---

APPEAL FROM THE JEFFERSON CIRCUIT COURT  
CHANCERY BRANCH, THIRD DIVISION  
HONORABLE CHARLES ANDERSON

---

## BRIEF FOR APPELLANT

---

*May it please the Court:*

### **A. Statement of the Nature of the Proceedings**

This action started with the filing of a Declaration of Rights by appellee, Loy Crawford (hereinafter referred to as "Crawford"), naming as defendants appellant, Robert H. Taylor (hereinafter referred to as "Taylor"), and appellees, Bremer Ehrler, James Larkin, B. C. Van Arsdale, and James Steinfeld (who comprise the Jefferson County Board of Elections, and are hereinafter referred to collectively as "Board of Elections") (Tr., pp. 2-4).

The Declaration of Rights alleged that Crawford and Taylor were opposing candidates for the office of

Mayor of the Fifth Class City of West Buechel in an election held November 5, 1974; that the election resulted in a tie vote; that the Board of Elections was about to resolve the tie; and that there were illegal votes cast which should not be counted (Tr., pp. 2-4).

Following the filing of the Declaration of Rights, there were multiple pleadings filed by both Crawford and Taylor. Both parties made multiple and various allegations of illegalities in the election (Tr., pp. 6-20).

The Chancellor held hearings, conducted a trial, heard arguments and ultimately decided all of the issues, except one. The end result of all these various issues, except one, was that the Chancellor decided that there were illegal votes on both sides and that the election did, in fact, end in a tie vote. The Board of Elections performed its duty of casting lots to break the tie, Crawford won the casting of lots and was issued a Certificate of Election (Tr., pp. 16; 32-37).

The one issue left unresolved was Taylor's allegation that pursuant to KRS 61.280 Crawford was disqualified from holding the office of Mayor of the City because his spouse was employed by the City (Tr., pp. 11; 17).

On February 11, 1976, the Chancellor entered a Final Judgment deciding that there was no conflict of interest so as to disqualify Crawford from holding the office of Mayor of the City (Tr., p. 47).

From that Final Judgment, this appeal was taken. A partial designation of record and statement of points were filed limiting the appeal to the sole issue of conflict of interest (Tr., pp. 49-52).

### **B. Statement of Essential Facts**

Many of the issues, pleadings and evidence in this action involved highly complex and disputed facts. However, these complex and disputed matters are not before this Court, and are not involved in this appeal. Fortunately, the sole issue raised by this appeal involves simple, and completely undisputed facts, leaving purely a matter of law to be decided.

The undisputed facts involved in this appeal are as follows:

In January, 1974, the City of West Buechel was a sixth class city. Crawford was a member of the Board of Trustees. On January 14, 1974, the Board of Trustees adopted a resolution appointing Crawford's wife as Clerk-Treasurer with a salary of \$350 per month. Crawford voted for the resolution (Tr., p. 41). Crawford's wife has held that job and collected a monthly salary from the City continuously since that time.

On June 21, 1974, the City of West Buechel became a fifth class city. Crawford was appointed Acting Mayor (Tr., p. 31).

At the election held November 5, 1974, Crawford and Taylor were opposing candidates for the office of Mayor. The election was a tie, Crawford won the casting of lots and was issued a Certificate of Election.

Crawford has served as Mayor continuously from the time of his appointment on June 21, 1974 to the present.

Originally Crawford did not receive any salary for serving as Mayor. However, in May, 1975, the City of



West Buechel adopted an ordinance giving Crawford both a salary and an expense allowance, *retroactive to June 21, 1974* (Tr., p. 31).

Crawford and his wife commingle the monies which they each receive from the City in joint checking and savings accounts (Depo. Crawford 3-20-75, p. 47, lines 3-6).

### **ARGUMENT**

**Did the Chancellor Err in Adjudging That Appellee, Loy Crawford, Was Not Disqualified by Conflict of Interest From Holding the Office of Mayor of the City of West Buechel?**

As stated above, the facts are simple, and undisputed. The law should be clear. The pertinent statute is KRS 61.280:

“KRS 61.280. Fifth and sixth-class city officers not to be interest in contract with city; Penalty—. No officer of a city of the fifth or sixth class shall be interested, directly or indirectly, in any contract with the city of which he is an officer, or in doing any work or furnishing any supplies for the use of the city or its officers in their official capacity. Any claim for compensation for work done, or supplies or materials furnished, in which any such officer is interested, shall be void, and, if audited and allowed, shall not be paid by the treasurer. Any willful violation of the provisions of this section shall be grounds for a removal from office, and shall be a misdemeanor, and punished as such.”

Crawford is the Mayor and receives a salary. His wife has an employment contract with the City and

receives a salary. Their funds are commingled in joint accounts. There can be no escaping the clear words of the statute, “. . . No officer of a city of the fifth or sixth class shall be interested, directly or indirectly, in any contract with the city of which he is an officer . . .”

Crawford has an interest in his wife's employment contract, and this constitutes a bar to his holding office as Mayor.

Parties to joint accounts directly benefit from funds in such accounts, regardless of which party made deposits in the joint accounts. Kentucky law makes parties to joint savings accounts joint tenants as to the money in said accounts. KRS 289.391. This gives each “joint tenant” direct access to and direct benefit from monies in joint savings accounts. A similar result achieves with joint checking accounts. Crawford concedes he and his wife commingle their funds in joint checking and joint savings accounts (Depo. of Crawford 3-20-75, p. 47, lines 3-6). Mrs. Crawford's salary contributions to these joint accounts derive from her employment contract with the City of West Buechel. Crawford is “directly interested” in this employment contract because it provides a flow of funds to accounts he jointly shares with his wife. Mr. Crawford can withdraw, at will, money earned by Mrs. Crawford under her employment contract with City of West Buechel.

The economic unit of husband and wife benefit, albeit indirectly, from money making activities of either spouse. Although no Kentucky case precisely on point has been found, the majority of other jurisdic-

tions treat husband and wife as one economic unit for purposes of scrutinizing spouse contracts with governmental units. Operating under a Washington Statute similar to the "no interest" provisions of KRS 61.280, the Washington Supreme Court permitted state recovery of the salary paid to the clerk/auditor who "received, indirectly at least, a compensation from the county in addition to his salary" by means of employing his wife. *State v. Miller*, Wash., 20 P. 2d 136 (1948). The Court further reasoned:

"It is apparent that Mr. Miller did receive at least an indirect benefit from the monies received and expended by his wife. A spouse's vacation expenses and money spent for the children are certainly benefits to the community (of husband and wife)." *State v. Miller*, supra, p. 141.

See also, *State v. Hurd*, 5 Wash. 2d 662, 106 P. 2d 323 (1940); *Beakley v. City of Bremerton*, 5 Wash. 2d 670, 105 P. 2d 40 (1940). The Michigan court in *Woodward v. Wakefield*, 210 N. W. 322, voided a land transaction between a city and the wife of that city's mayor. A "no interest" statute parallel to Kentucky's was violated. The Court held:

"It is useless to argue that . . . the husband does not indirectly profit by it. They live in the same home, and their property interests are more or less of a community interest." *Woodard v. Wakefield*, supra, p. 323.

The Missouri Court in *Githens v. Butler Company*, 350 Mo. 295, 165 S. W. 2d 650 (1942), voided the tax sale purchased by a county judge's wife. Missouri

Statutes, like Kentucky's, forbade elected officials from having direct or indirect interest in county transactions. The court concluded the husband/judge had an interest in the wife's purchase, noting that:

"The husband is under a duty to and is liable for his wife's support . . . and in this state he is entitled to dower in his wife's real estate, . . . either of which are pecuniary interests and disqualifying under statutes requiring such an interest even though it is indirect." *Githens v. Butler County*, supra, p. 652.

These decisions have in common realistic judicial treatment of spouse contracts. These courts pierced the veil, holding that husbands have real, tangible interest in income produced or property acquired by their wives. Crawford is "indirectly interested" in his wife's employment contract with the City of West Buechel. Mr. and Mrs. Crawford constitute a single economic unit. To the extent the Crawford economic unit benefits from Mrs. Crawford's employment, Crawford maintains an illegal "indirect interest" in the employment contract between his wife and the City.

The Kentucky statute and cases are fully as strong as those from other jurisdictions. In fact, Kentucky law prohibits even the appearance of misconduct. *City of Bardstown v. Nelson Co.*, Ky., 90 S. W. 246 (1906) (contract between fifth class city and city councilman voided); *Arms & Short v. Denton*, 212 Ky. 43, 278 S. W. 158 (1925) (contract between fifth class city and city marshal voided).

The only argument advanced by Crawford, and the one relied upon by the Chancellor, was that KRS 61.280 does not apply to this case, because the employment contract was entered into between Crawford's wife and the City before Crawford became Mayor. The only authority cited by Crawford and the Chancellor was *Collingsworth v. City of Catlettsburg*, 236 Ky. 194, 32 S. W. 2d 982.

The facts and holding in the *Collingsworth* case simply do not support the Chancellor's decision in this case. In the *Collingsworth* case, a member of the city council became a partner in a firm which had a contract with the city, *but he did not do so until after he left office*. The particular statute under which the *Collingsworth* case was decided was Section 3484, Ky. Statutes and read as follows:

"Should any officer of said city be directly or indirectly interested as agent or principal in any contract with said city, or as surety on any such contract, he shall thereby vacate his office, and the contract, if entered into before said officer vacates his office, shall be null and void."

The Court decided that since the statute precisely used the words ". . . if entered into before said officer vacates his office . . ." that there was insufficient evidence to find that the councilman was interested in the contract at the time it was made.

In reaching the decision in the *Collingsworth* case, the Court distinguished a line of other authorities, which are far more in point on the question now before the Court.

“It has been often decided by this court that a contract entered into between any person, firm, or corporation and a city while the person, firm, or corporation, or the members thereof, is a member of the board of council of the city, or an officer of the city forbidden to enter into such a contract, is null and void. *Byrne & Speed Coal Co. v. City of Louisville*, 189 Ky. 346, 224 S. W. 883; *Bradley & Gilbert v. Jacques*, 110 S. W. 836, 33 Ky. Law Rep. 618; *Bornstein v. Louisville School Board*, 137 Ky. 108, 122 S. W. 522; *Arms & Short v. Denton*, 212 Ky. 43, 278 S. W. 158; *Nunemacher v. City of Louisville*, 98 Ky. 334, 32 S. W. 1091, 17 Ky. Law Rep. 933; *City of Winchester v. Frazer*, 43 S. W. 453, 19 Ky. Law Rep. 1366; *Wilson v. Smith*, 215 Ky. 504, 284 S. W. 1102; *Wilson v. Blanton*, 226 Ky. 518, 11 S. W. (2d) 127. The evidence in this case does not bring it within the rules announced in the cases cited.” *Collingsworth v. City of Cattlettsburg*, supra.

The situation involved in this appeal is not at all analogous to the *Collingsworth* case. First, we are dealing with a different statute with substantially different words. Second, the facts are simply not the same. In this case, *Crawford was a member of the city council and voted to employ his wife in January, 1974. When Crawford became Mayor on June 21, 1974, the employment contract between the City and Crawford's wife was in effect and has remained in effect during his term in office.*

The operative facts are that Crawford is an officer of the City, and Crawford has an interest in a contract with the city. KRS 61.280 clearly prohibits such an arrangement.

More than just prohibiting such arrangements, KRS 61.280 requires that the officer vacate the office.

In *Napier v. Gay*, 264 Ky. 359, 94 S. W. 2d 682 (1936), the Kentucky Court of Appeals held that a fourth-class city councilman who voted for a contract in which he and his daughter were interested automatically vacated his office. Referring to KRS 3484 (now KRS 61.270, the fourth-class city counterpart to KRS 61.280), the Court stated:

“ . . . It clearly and explicitly provides the very fact of an officer of a city becoming directly or indirectly interested as agent or principal in a contract with the city vacates the office. Such an officer by his own act does that. It is just as effective as if he resigns and his resignation is accepted, or he accepts an incompatible office, or otherwise voluntarily makes himself ineligible. . . .” *Napier v. Gay*, *supra*.

Likewise, in the case now before the Court, Crawford's interest in the city employment contract with his wife effectively vacates his office.

This was true on November 4, 1974 when the election was held. The election ended in a tie, but the Chancellor should have held that Crawford had forfeited his right to hold office, and Taylor should have been declared winner of the election.

**CONCLUSION**

The facts are undisputed. The statute is quite clear. The Chancellor erred on the law. KRS 61.280 disqualified Crawford from holding the office of Mayor of the City of West Buechel. The judgment should be reversed with directions to enter a judgment declaring Taylor the duly elected Mayor, and requiring Crawford to return to the City all salary which he has received to date.

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